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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.G. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. D.G., Defendant and Appellant.	E055931 (Super.Ct.No. RIJ118733) **OPINION**

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Clare M. Lemon, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

D.G. (the father) appeals from an order terminating parental rights to two of his children, arguing that the juvenile court should have found that the "beneficial parental relationship" exception applied. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) We disagree; hence, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

The father and the mother were married. As of 2009, they had a five-year-old son, B.G., and a four-year-old daughter, Br.G. The father was not the boy's biological father, but the juvenile court eventually found that he was the boy's presumed father.

In 2009, the mother was arrested for possession of methamphetamine and child endangerment. The father was in jail, due to probation violations. As a result, the Department of Public Social Services (the Department) detained the children and filed a dependency petition concerning them. The father was released from jail before the petition was actually filed. However, further investigation revealed that both parents had a history of drug abuse and domestic violence.

In January 2010, at the jurisdictional/dispositional hearing, the juvenile court sustained jurisdiction based on failure to protect. (Welf. & Inst. Code, § 300, subd. (b).) It formally removed the children from the parents' custody, and it ordered reunification services.

In December 2010, the father was arrested for burglary, receiving stolen property, and vandalism. He remained incarcerated until September 2011.

Meanwhile, in January 2011, at the 12-month review hearing, the juvenile court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26).

In October 2011, the children were placed with their maternal grandmother and her husband, in Indiana. The couple was "committed" to adopting the children.

In March 2012, at the section 366.26 hearing, counsel for the father asked the juvenile court to find that the beneficial parental relationship exception applied. Counsel for the Department and counsel for the children argued that the father had not carried his burden of proof. The juvenile court found that the children were adoptable and that there was no applicable exception to termination. Accordingly, it terminated parental rights.

II

THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

A. *Additional Factual and Procedural Background.*

At the section 366.26 hearing, three specified social worker's reports were offered and admitted. We therefore confine our review to these reports; we disregard other reports that were not before the juvenile court when it made the challenged ruling. (See § 366.26, subd. (c)(1).)

At the time of the section 366.26 hearing, the boy was seven; the girl was six.

In April 2011, the social worker reported that "visits have been appropriate and therapeutic to the children and they a[re] strongly bonded to their parents."

Originally, the children had been placed with foster parents in Riverside. In May 2011, however, the maternal grandmother and her husband visited them in Riverside, and

they "instantly bonded." Thereafter, they kept in touch with the maternal grandmother via phone calls, which they enjoyed.

While the father was incarcerated, he and the children had only one face-to-face visit, in July 2011.[1] However, he wrote to them every week. According to the social worker, his letters were "loving, sincere, and . . . always appropriate in content."

In October 2011, the children were placed with the maternal grandmother. "They . . . adjusted well to the placement and quickly established roots within their family and the community." They were "well bonded" with the maternal grandmother and her husband. The maternal grandmother was "dedicated" to adopting them.

The father "maintain[ed] regular weekly contact" by telephone. The children enjoyed speaking to him. According to the social worker, continued contact would "not [be] detrimental . . . ."

B. *Analysis.*

As a general rule, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions. (*Id.*, subd. (c)(1)(A), (1)(B)(i)-(1)(B)(vi).) One of these is the beneficial parental relationship exception, which applies when "termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from

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[1] Both sides cite and discuss a social worker's account of that visit. That account, however, was in a report filed in connection with an earlier review hearing; the report was not introduced at the section 366.26 hearing.

continuing the relationship." (*Id.*, subd. (c)(1)(B)(i).) "'The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions. [Citation.]' [Citations.]" (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

"[C]ourt[s] ha[ve] interpreted the phrase 'benefit from continuing the relationship' in section 366.26, subdivision (c)(1)(B)(i) to refer to a 'parent-child' relationship that 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

To invoke the beneficial parental relationship exception, "[a] parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from the day-to-day interaction, companionship and shared experiences.' [Citation.] The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, . . . the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. [Citation.]" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555, fn. omitted.)

"We review the trial court's findings for substantial evidence. [Citation.]" (*In re Dakota H*. (2005) 132 Cal.App.4th 212, 228; see also *In re Bailey J*. (2010) 189 Cal.App.4th 1308, 1314-1315.) "'On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' [Citation.]" (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 553.) Thus, "a challenge to a juvenile court's finding that there is no beneficial relationship amounts to a contention that the 'undisputed facts lead to only one conclusion.' [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed." (*Bailey J.*, at p. 1314.)

The social worker's opinion that continued contact with the father would "not [be] detrimental" sums things up pretty well. This falls short of meeting the father's burden of proving that the children would affirmatively *benefit* from continuing the relationship; a fortiori, it falls short of showing that that benefit would outweigh the benefit of being in a stable, permanent, adoptive home. There was no evidence that the father played a parental role in the children's life. Quite the contrary, the prospective adoptive parents were evidently fulfilling that role. And the father can cite no evidence that the children would be "greatly harmed" if parental rights were terminated.

The father relies heavily on the social worker's statement that "visits have been appropriate and therapeutic to the children and they a[re] strongly bonded to their parents." The social worker made this statement, however, in April 2011, before the

children had visited the prospective adoptive parents for the first time. During that first visit, they "instantly bonded." Moreover, after October 2011, when the children were placed with the prospective adoptive parents, they had become "well bonded" and "established roots." Thus, the juvenile court could reasonably find that, while the children may have had "pleasant visits" with the father in the past, the parental relationship was not so beneficial that it should prevent adoption.

The father argues that this case is analogous to *In re Amber M.* (2002) 103 Cal.App.4th 681, which held that the juvenile court in that case erred by declining to apply the beneficial parental relationship exception. (*Id.* at p. 691.) There, however, a bonding study found that the mother and one child, Amber, "shared 'a primary attachment' and a 'primary maternal relationship' and that '[i]t could be *detrimental*' to sever that relationship." (*Id.* at p. 689, italics added.) A court-appointed special advocate testified that another child, Samuel, "loved and missed Mother and *had difficulty separating from her*." (*Ibid.*, italics added.) The court concluded, "There is no challenge to the fact that Amber and Samuel love and *miss* Mother and have a strong primary bond with her." (*Id.* at p. 690, italics added.) It is precisely such evidence of detriment that is lacking in this case.

Finally, the father complains that the juvenile court's consideration of the issue was "cursory," because the juvenile court "did not discuss the evidence" and did not "engage in the required analysis" (on the record, at least). He cites no authority, however, for the proposition that this was error.

It was not. "A '"'judgment or order of the lower court is *presumed correct*[, and a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" [Citation.]' . . . '[W]e apply the general rule "that a trial court is presumed to have been aware of and followed the applicable law."' [Citation.] . . . [W]hen 'a statement of reasons is not required and the record is silent, a reviewing court will presume the trial court had a proper basis for a particular finding or order.' [Citation.]" (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499.)

III

DISPOSITION

The order appealed from is affirmed.

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RICHLI
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.